

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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15 FEB 2006

PARTNER ACTRUE

## NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(PCT Rule 71.1)

Applicant's or agent's file reference LODM/P31853PC		Date of mailing (day/month/year) 13.02.2006	
International application No. PCT/GB2004/004580	International filing date (day/month/year) 29.10.2004	Priority date (day/month/year) 30.10.2003	
Applicant LODERS CROKLAAN BV			

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary report on patentability and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Nielsen-Hannerup, A Tel. +49 89 2399-7739	
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# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference LODM/ P31853PC	<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. PCT/GB2004/004580	International filing date (day/month/year) 29.10.2004	Priority date (day/month/year) 30.10.2003	
International Patent Classification (IPC) or national classification and IPC A23L1/015, A61K35/78, A23C9/00			
Applicant LODERS CROKLAAN BV			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> <i>(sent to the applicant and to the International Bureau) a total of 4 sheets, as follows:</i></p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> <i>(sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</i></p>
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>

Date of submission of the demand 27.05.2005	Date of completion of this report 13.02.2006
Name and mailing address of the international preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Rinaldi, F Telephone No. +49 89 2399-7360



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**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

**Description, Pages**

1-20 as originally filed

**Claims, Numbers**

1-23 received on 16.08.2005 with letter of 15.08.2005

**Drawings, Sheets**

1/1 as originally filed

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3.  The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

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1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

the entire international application,  
 claims Nos. 19-21

because:

the said international application, or the said claims Nos. 19-21, as far as industrial applicability is concerned relate to the following subject matter which does not require an international preliminary examination (specify):

**see separate sheet**

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):  
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.  
 no international search report has been established for the said claims Nos.  
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form  has not been furnished

does not comply with the standard

the computer readable form  has not been furnished

does not comply with the standard

the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

See separate sheet for further details

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-23
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-23
Industrial applicability (IA)	Yes: Claims	1-18,22-23
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

**see separate sheet**

Re Item III

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The subject-matter of present claims 19-21 refers at least implicitly to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to novelty, inventive step and industrial applicability of the subject-matter of these claims (Art.34(4)(a)(I) PCT).

Re Item V

**Reasoned statement under Art.35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1 Reference is made to the following documents:

- D1: US-A-5 607 971 (AL-MAHMOUD MOHSEN ET AL) 4 March 1997 (1997-03-04)
- D2: US-A-5 466 453 (UCHIDA YUKIO ET AL) 14 November 1995 (1995-11-14)
- D3: US-A-5 690 984 (LIM JUNG GEUN) 25 November 1997 (1997-11-25)
- D4: US-B1-6 329 000 (JI LING) 11 December 2001 (2001-12-11)
- D5: DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANFURT/MAIN, DE; 2000, EUN-JU KIM ET AL: "Bread properties utilizing extracts of pine needle according to preparation method." XP002272259 Database accession no. 2000-00-m0004
- D6: DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANFURT/MAIN, DE; 1999, YOUNG-AE OH ET AL: "Effect of addition of water extract of pine needle on tissue of kimchi." XP002272260 Database accession no. 1999-00-j0385
- D7: WO 02/101025 A (KWON JAY YUNE ;KOREA BIOTECH CORP (KR); VLADIMIR BAKHAREV A (RU)) 19 December 2002 (2002-12-19)
- D8: US-A-5,494,667

2 The subject-matter presently claimed is obvious in the sense of Art.33(3) PCT.

2.1 Beneficial effects of pine needle extracts such as for instance lowering of blood pressure are known in the art, e.g. from D2 or D4 (for details on relevant passages,

please see ISR). These documents also disclose that pine needle extracts are used in food products including dairy products and also in dietetic products. Also, a large variety of substances is known to be present in pine needle extracts, for instance several organic acids such as shikimic acid, GABA and quinine acid to name but a few (see col.2 l.37-47 of D8).

- 2.2 D1 discloses that isocupressic acid is undesirable in as far as it is known in the art to induce early abortion in pregnant beef cattle (col.2 l.40-49). While it might be argued that the said disclosure only refers to compositions comprising particularly high concentrations of isocupressic acid, it cannot be denied that in the food field scientific arguments are not well received by the consumer. If the consumer believes that a substance is connected with a health risk, he will refuse the product altogether. Well founded reasoning as to why a risk is minimal or does not exist or is statistically not relevant will not reach the average consumer. It is considered that the average consumer, probably even a male consumer, would not accept a product that is somehow connected to the risk of abortion. Obviously, a substance with such a bad publicity or reputation is undesirable in a health product.
- 2.3 The closest prior art are documents D2 or D4 which disclose therapeutic effects of pine needle extracts and the use thereof in various food products (for details on relevant passages, please see ISR).
- 2.4 The technical problem is judged to be provision of a pine needle extract having beneficial effects and having a lowered risk on the user or at least providing a better acceptance with the consumer.
- 2.5 Apart from warning from the presence of isocupressic acid in pine needle extract, D1 also teaches that pine needle extract fractionation will lead to products of pine needle extract that are free from isocupressic acid and yet provide desired, beneficial health effects (col.5 l.43-col.10 l.38; col.15 l.55-64). D1 demonstrates that a variety of substances having therapeutic effects apart from isocupressic acid can be found in pine needle extract (see e.g. claims 7 and 11).
- 2.6 In view of what is stated above, it appears to be obvious for the one skilled in the art to provide pine needle extracts having reduced amounts of isocupressic acid, while maintaining all other beneficial substances present in the pine needle extract. In fact, the one skilled in the art would aim at selectively reducing the amount of isocupressic acid while maintaining all other beneficial components, including the above mentioned organic acids. The one skilled in the art would do this with a reasonable

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expectation of success, because he knows that other substances and not isocupressic acid or at least not only isocupressic acid is responsible for the therapeutic effect.

3 In principle, the same arguments apply to D3 and D5-D7 which all disclose beneficial effects of pine needle extracts.

**Re Item VIII**

**Certain observations on the international application**

The subject-matter of present claims 3 and 4 appears to be redundant (Art.6 PCT).